

## **Library Service Contracts**

By Lance M. Werner

Michigan's public libraries are authorized by law to enter into library service contracts. At least once or twice a month, I have the following conversation (or a variation of it) with one of my friends out there in library land:

"Hi Lance, my library board is contemplating entering into a service contract for library services with the "insert name here" municipality or library, and we were wondering if you had any examples of library service contracts?"

Invariably my answer to this question is:

"Hi there. I hope you are having a great day! Currently the Library of Michigan does not have any sample service contracts available. You may have better luck if you ask other libraries or talk with your library cooperative."

Given the frequency of this question, I thought it might be helpful for the library community if I wrote an informational overview on the ins and outs of library service contracts.

### **Contracts in General**

All contracts have some elements in common. One shared feature is that some type of offer has been made. An offer is an expression of a person or entity's intent to enter into a contract. Offers should include an articulation of the essential terms of the proposed bargain and be communicated to the offeree. Another commonality is acceptance. The recipient of the offer agrees to the terms of the bargain and communicates acceptance to the offeror. It is crucial that the contract demonstrate that the parties have a mutual understanding of the contract's terms and conditions and they have agreed to be bound by them. This is referred to as a "meeting of the minds".

### **Purpose Section**

Generally, library service contracts will consist of several sections. These contracts often begin with a "purpose" section. The purpose section identifies the parties, provides the general premise of why the contract is being entered into, and may state what is being offered. A purpose section might look like:

**The purpose of this LIBRARY SERVICES CONTRACT (contract) is to**  
**secure the provision of library services to the residents of \_\_\_\_\_(Municipality),**  
**through contract with \_\_\_\_\_(Library), located at \_\_\_\_\_(Address).**

## Authority

An “authority” section usually follows the purpose section. The authority section is important because it is well held in Michigan law that governmental entities and public officials have no power to do anything unless they are authorized by law to perform that act. *Hanselman v Kileen*, 419 Mich 168, 351 NW2d 544 (1984).

An authority section might look like:

**This contract is authorized by section** *[insert legal citation]*. ( Examples of authorizing statutes include: Sec. 12 of the District Library Establishment Act, 1989 PA 24, MCL 397.182; Sec. 13 and 14 of the City, Village, and Township Libraries Act, 1877 PA 164, MCL 397.213; County Libraries Act, 1917 PA 138, MCL 397.301 *et seq.*, city charter provision or city ordinance).

It is possible that more than one section of the law may be cited as authority for a single contract.

## Consideration

Library service contracts (and contracts in general) must include language that describes what a party is paying or exchanging for the library services being furnished. In this vein, library service contracts should have a “consideration” section. The consideration section should detail what money or other thing will constitute payment for services rendered.

The following is an example of a consideration section:

**As consideration for the same library services the** \_\_\_\_\_ *(Library)*  
**offers residents living within its legal service area, the** \_\_\_\_\_ *(Municipality)*,  
**located in** \_\_\_\_\_ *(County)* **agrees to pay the** \_\_\_\_\_ *(Library)* **the**  
**following consideration:** \_\_\_\_\_ (Examples: penal fines allocated to a  
municipality under the Penal Fine Distribution Act, 1964 PA 59, MCL 397.31 *et seq.*;  
funds from municipal appropriations; local millage revenues such as those authorized by  
Sec. 13 and 14 of the City, Village and Township Libraries Act, as cited above, State Aid  
funds.).

The consideration given in exchange for library services will sometimes include proceeds from a combination of funds from the examples listed above. The amount of

consideration is generally determined through negotiations between the parties. It can be stated in a variety of forms (percentage, millage rate, dollar amount, *etc.*). State law clearly indicates that a municipality may commit its share of per capita penal fines toward the cost of receiving public library services for municipal residents. See MCL 397.35. It should be noted that state aid dollars and penal fines do not come directly out of municipal coffers, in contrast to appropriations from municipal general funds.

## **Term & Amendment**

A library service contract may contain a contract length and contract amendment section. This section identifies the time period that the parties intend to be bound by the contract. Frequently, renewal language appears in the term and amendment section.

It is important to understand that certain statutory provisions may be applicable to the length and amendment section, depending on the authorizing law on which the contract is based. For example, if a contract is being executed under Sec. 14 of the City, Village and Township Libraries Act, MCL 397.214, the contract term must be effective for an initial 3-year term and may automatically extend after the expiration of the 3-year term for an indefinite period.

In addition, the term and amendment section will indicate how the library service contract can be modified prior to its expiration.

An example of a term and amendment section is as follows:

**This contract takes effect on \_\_\_\_\_ (*date*), shall be for a term of \_\_\_\_\_ years, and shall automatically extend for a like period after expiration of the initial \_\_\_\_\_ year term. This contract will automatically renew for a like period upon expiration of any term following the initial term. This contract may be amended only by execution of a written amendment signed by duly authorized representatives of the parties.**

## **Termination**

The termination section usually appears in the contract immediately following the term and amendment section. As the name suggests, the termination section identifies the conditions under which the contract can be terminated.

A termination clause might look like:

**Either party may terminate this contract during any term by giving written notice to the other party at least \_\_\_\_\_ months prior to the date of termination.**

### **Extinguishment, Severability & Assignment**

A library service contract may contain a section that details the possibility that some sections may be severed from the contract by a court or by operation of law without extinguishing the contract as a whole. The section might also address assignment of contract duties. Contract extinguishment occurs when a contract is dissolved through operation of law or court decision.

For instance, if part of a contracting municipality were to be annexed into the jurisdictional service area of a district library, the penal fines and state aid that the municipality offered under the contract for the annexed area would no longer be available under the contract. This situation only occurs when two municipalities, such as a school district and a township have overlapping jurisdictional boundaries. Generally, when this happens the entire contract is extinguished unless there is a severability clause that enables the remaining portions of the contract to continue despite the change described above.

A court can also extinguish a contract. If a section of a contract has been challenged and the court finds the section to be contrary to the law, the court could extinguish the entire contract unless the contract contains a severability clause.

A contract might also contain an assignment clause that permits the contract to be assigned in the event one of the parties changes its legal status. For example, if a city library reorganizes itself as a district library, an assignment clause would enable any library service contract between the city library and municipality to be assigned to the district library and continue.

An example of these types of sections would be:

**If either party becomes a participating municipality of an existing district library, or if a party establishes a new public library, this contract shall be extinguished as of the effective date of an amended library establishment agreement or the establishment of a new library.**

**OR**

**If the service area described in this contract is altered, the changes will become part of this contract and the amount of consideration given by the**

**municipality for library services may be adjusted to reflect the change. The changes will be accepted by the contracting parties without invalidating the remaining terms in this contract. Changes must be accepted within\_\_\_\_\_(*time period*) or the contract becomes void. If the proposed changes are not accepted, the contract becomes void.**

## **AND/OR**

**The parties agree that upon consent set forth in writing, this contract may be assigned in accordance with the applicable Michigan law, if the legal status of either of the parties changes.**

### **Other Sections**

It is important to recognize that other contract sections may be useful or necessary, depending on the circumstances. For instance, Sec. 15 of the City, Village and Township Libraries Act, MCL 397.215 authorizes the formation of joint library boards including a representation from a contracting municipality. In other words, Sec. 15 authorizes a municipality contracting for library services to request and have representation on the board of the library providing services to the city, village or township.

### **Final Thoughts**

The examples noted above are for informational purposes only and are in no way meant to constitute legal advice. A library or municipality desiring to enter into or amend a library service contract should counsel from a licensed attorney and work closely with her or him to ensure that the desired library services contract or amendment is legal and accurately reflects the parties' agreement. A library service contract must embody the complete agreement and understanding of the parties.

Any library or municipality currently furnishing or receiving services through a library service contract should be familiar with the terms of the existing contract. Parties should periodically consider whether changes or new contracts might be needed.

If you have questions or comments regarding this article, please feel free to contact Lance M. Werner, Library Law Specialist at the Michigan Department of History, Arts and Libraries, Library of Michigan. He can be reached at (517) 373-1299 or [wernerl@michigan.gov](mailto:wernerl@michigan.gov).